IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8635 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PU YAGNIK

Versus

DISTRICT EDUCATION OFFICER

Appearance:

MR AG VYAS for Petitioner No. 1
NOTICE SERVED for Respondent No. 3
MS HANSA PUNANI, ASST. GOVT PLEADER for Respt No.1 & 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 05/09/2002

ORAL JUDGEMENT

1. Heard learned counsel for the respective parties.

2. As a result of the hearing and discussion, certain facts emerge from the record, which are not in dispute.

2.1 The petitioner being a Trust in the management of a school, applied to the 1st respondent for filling up the post of a Teacher by direct recruitment, which had fallen vacant due to the death of one Somabhai Manibhai Patel. This late teacher had been appointed by direct recruitment.

2.2 The aforesaid application of the petitioner, vide application dated 23rd February 2000, [Annexure 'B' to the petition] was replied to, by the District Education officer by his letter at Annexure 'C' to the petition. According to the learned counsel for the petitioner, the said letter at Annexure 'C' does not reject the petitioner's application for N.O.C. to appoint a teacher by direct recruitment. According to him, this letter merely postpones the issue of granting N.O.C. for the reasons stated therein.

2.3 However, the matter did not end there, and the petitioner was obliged to approach this Court inasmuch as the respondents posted one surplus teacher by the name of D.B. Bhadaria, apparently to take the place of the deceased teacher. In short, the petitioner's contention is that the respondents, since they were not in a position to refuse grant of NOC for direct recruitment of one teacher, merely postponed the application, and by-passed the very purpose of the application, by making the appointment in the School of a surplus teacher. This surplus teacher appointed to the petitioner School by the respondent authorities was shown as respondent No.3 in the petition.

2.4 However, learned counsel for the petitioner states that inspite of the posting order in respect of respondent No.3 to the petitioner School, the said respondent in fact never joined as a teacher of the petitioner School. Consequently, after some time, the respondent authorities issued a transfer order to the said respondent No.3, who is now posted elsewhere. Therefore, request to delete Respondent No.3 is granted. Consequently, the vacancy with the petitioner school is once again required to be filled in. It is in this context that this Court is required to apply its mind to the facts of this case.

3. There is no doubt that the respondent authorities are required to apply their mind in accordance with law to the petitioner's request to permit the petitioner to make appointment by direct recruitment. However, this does not mean that the consideration of the application or the grant of the application can be by-passed by the concerned authorities by filling in such vacancy by making appointment to the school of a surplus teacher, particularly where the vacancy is in respect of a person who was appointed by direct recruitment.

4. The affidavit-in-reply filed by the respondents is sworn on 27th February 2001, and obviously therefore, does not reflect the correct fact situation as it prevails today. It is, therefore, obvious that the respondent authorities are required to apply their mind on the facts of the case in accordance with law to the application made by the petitioner, and which has been kept pending, and which is neither granted nor rejected [Annexure 'B' to the petition]. The concerned respondents are, therefore, directed to deal with the said application at Annexure 'B' to the petition in accordance with law, and to decide the same on merits, and in the light of the fact situation now prevailing, without avoiding the decision thereon, by making an appointment to the school of another substitute teacher. It is accordingly so held and directed.

5. This petition, is, therefore, allowed to the aforesaid extent. Rule is accordingly made absolute with no orders as to costs.

6. It is expected that the concerned respondents will take appropriate decision as directed hereinabove, within a period of three months from the date of service upon them of the present order. Direct service is permitted.

(Y.B. BHATT, J.)

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